IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 34 OF 2006

Pandharinath S. Chaudhary .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondent

Mrs. S.A. Dhamale for Petitioner.
Mrs. A.S. Pai, APP for State.

**CORAM : B. H. MARLAPALLE &**
**SMT. R.S. DALVI,JJ.**

**Date : February 16, 2006.**

**P.C.:**

1. Heard Mrs. Dhamale, the learned counsel for the petitioner and Mrs. Pai, the learned APP.

2. Rule. Mrs. Pai, the learned APP, waives service for the State. By consent of the parties the petition is taken up for final hearing forthwith, more so because the record from the Lower Appellate Authority has been placed before us.

3. By the order dated 14/2/2005 passed by the Police Commissioner at Nashik, the license of Swagat Lodge being run by the petitioner at Nashik came to be cancelled and the said order was challenged before the State Government by way of an appeal. The appeal has been dismissed by the impugned order dated 28/11/2005.

4. There is no dispute that the appeal was submitted under Section 33 of the Bombay Police Act, 1951 and the first date for hearing the appeal was fixed as 26/9/2005. The notice for the same was served on the petitioner and his advocate as well. But on 26/9/2005 the appeal was not heard and the hearing was adjourned to 13/10/2005. Fresh notice was issued as is clear from the record and it was addressed to the petitioner. However, there is no proof that the said notice was served on the petitioner and the petitioner was aware that the appeal was to be heard on 13/10/2005. Mrs Pai, the learned APP on instructions stated that the notice was sought to be served through the Police Commissionerate at Nashik. But there is no acknowledgement given by the same agency to hold that the notice for the hearing fixed on 13/10/2005 was served on the petitioner. The remedy of appeal is by way of a statutory provision and the appellant must have the opportunity of hearing. In the instant case the hearing was fixed on 13/10/2005, but there is no material to show that the notice for the said hearing was served on the petitioner and on this ground alone the impugned order which has been passed ex parte will

have to be set aside.

5. We, therefore, allow this petition and quash and set aside the order passed by the Minister for Home, Government of Maharashtra on 28/11/2005 and we remand the said appeal to the Appellate Authority for fresh consideration. Notice of fresh hearing, as may be fixed, shall be served on the petitioner and after hearing the petitioner, the appeal will be decided afresh as expeditiously as possible and preferably within a period of two months from today.

6. Rule made absolute in terms of the above order.

. Certified copy is expedited.

**(Smt.R.S. Dalvi,J.)** **(B.H. Marlapalle, J.)**